vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5691 OF 2005

Salim N. Shamshi & Ors. ... Petitioners

V/s.

Mr.Shahzaad Siraj Dalal & Ors. ... Respondents

Mr.A.S. Khandeparkar with Ms.Vidya Bandekar for Petitioners
Mr.R.S. Ghadge for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 13, 2005**

P.C.:

. The Petition challenges the order passed by the trial Court discharging the notice taken out by the Petitioners to be added as party defendants to the suit. The Petitioners claim that they are the trustees of the proposed trust, namely, Khankah-E-Ashrariya Trust. The Chairman of the proposed trust Mr.Janab Ashrar Ul Haq expired and, therefore, a suit has been filed for eviction of the petitioners and possession of the suit premises. The tenancy agreement was signed by Janab Asrar Ul-Haq, as the Chairman of the proposed Trust and Respondent Nos.1 and 2. Obviously, therefore, the proposed Trust has been recognised as the tenant of the suit premises by the trial Court. On this basis, the Petitioners claim to be the proposed trustees of the Trust. The suit, instead of being filed against the

proposed trustees has been filed against the heirs and legal representatives of Janab Asrar Ul-Haq. The grievance made by the Petitioners is that despite the fact that they are the proposed trustees, they have not been joined as defendants to the suit. It is submitted that it is they who should have been impleaded as party-defendants, rather than the legal heirs of the late Chairman of the Trust. Reliance is placed by the learned Counsel for the Petitioners on the judgment of this Court in the case of *Gulab Babusaheb Bargiri v/s. Executive Engineer, M.S.E.B. & Ors.*, **2001 (1) Mh.L.J. 63** in support of his submissions.

2. According to the Petitioners, the documents for registration of the trust have been presented to the Charity Commissioner and the registration is awaited. In my view the Petitioners must be added as defendants to the suit in their capacity as proposed trustees. Janab Asrar Ul-Haq has signed the tenancy agreement as Chairman of the proposed trust. Therefore, his heirs and legal representatives are not concerned with the suit premises.

3. Petition is disposed off accordingly.

4. The Plaintiffs will amend the plaint and add the

Petitioners as party defendants in their capacity of proposed trustees of the Khankah-E-Ashrariya Trust.